

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 14, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00002

Ex Parte: In the matter of
Adopting Revisions to the
Rules Governing Long-Term
Care Insurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to Chapter 200 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-185.

The proposed amendments to the Rules are necessary to correct errors in subsection E making reference to subdivisions in subsection D.

The Commission is of the opinion that the proposed amendments to 14 VAC 5-200-185 should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-185, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed amendments shall file such comments or hearing request on or before February 29, 2008, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2008-00002. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website:
<http://www.scc.virginia.gov/caseinfo.htm>.

(3) If no written request for a hearing on the proposed amendments is filed on or before February 1, 2007, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed amendments, may adopt the amendments proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed amendments, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the amendments by mailing a copy of this Order, together with the proposed amendments, to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, including all fraternal benefit societies, health maintenance organizations, and health services plans licensed in Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amendments, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments on the Commission's website,
<http://www.state.va.us/scc/caseinfo.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

Project 1119 - Proposed

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Long Term Care Insurance

14VAC5-200-185. Nonforfeiture benefit requirement.

A. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of §38.2-5210 of the Code of Virginia:

1. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection E of this section; and

2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

When a group long-term care insurance policy is issued, the offer required in §38.2-5210 of the Code of Virginia shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in §38.2-3522.1 of the Code of Virginia other than to a continuing care retirement community or other similar entity, the offer shall be made to each proposed certificateholder.

C. If the offer required to be made under §38.2-5210 of the Code of Virginia is rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in subdivision D 4 of this section shall still apply.

D. 1. After rejection of the offer required under §38.2-5210 of the Code of Virginia, for individual and group policies without nonforfeiture benefits, the insurer shall provide a contingent benefit upon lapse.

2. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

3. A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 60 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Percent Increase	
Issue Age	Over Initial Premium
29 and under	200%
30-34	190%

35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%

76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in subdivision 6 b of this subsection is 40% or more. Unless otherwise required, policyholders shall be

notified at least 60 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Percent Increase	
Issue Age	Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

This provision shall be in addition to the contingent benefit provided by subdivision 3 of this subsection, and where both are triggered, the benefit provided shall be at the option of the insured.

5. On or before the effective date of a substantial premium increase as defined in subdivision 3 of this subsection, the insurer shall:

- a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;
- b. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection E of this section. This option may be elected at any time during the 120-day period referenced in subdivision 3 of this subsection; and
- c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision 3 of this subsection shall be deemed to be the election of the offer to convert in subdivision 5 b of

this subsection unless the automatic option in subdivision 6 c of this subsection applies.

6. On or before the effective date of a substantial premium increase as defined in subdivision 4 of this subsection, the insurer shall:

a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

b. Offer to convert the coverage to a paid-up status where the amount payable for each benefit is 90% of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in subdivision 4 of this subsection; and

c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision 4 of this subsection shall be deemed to be the election of the offer to convert in subdivision 6 b of this subsection if the ratio is 40% or more.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subdivision D 4 3 but not subdivision D 5 4 of this section, are described in this subsection:

1. For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least 1.0% per year prior to age 50, and at least 3.0% per year beyond age 50.

2. For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subdivision 3 of this subsection.

3. The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection F of this section.

4. a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

b. Notwithstanding subdivision 4 a of this subsection, except that for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of: (i) the end of the tenth year following the policy or certificate issue date; or (ii) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

H. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of 14VAC5-200-150 or 14VAC5-200-153, whichever is applicable, treating the policy as a whole.

I. To determine whether contingent nonforfeiture upon lapse provisions are triggered under subdivision D 3 or D 4 of this section, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

J. A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

1. The nonforfeiture provision shall be appropriately captioned;
2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in

rates for premium paying contracts approved by the commission for the same contract form; and

3. The nonforfeiture provision shall provide at least one of the following:

- a. Reduced paid-up insurance;
- b. Extended term insurance;
- c. Shortened benefit period; or
- d. Other similar offerings approved by the commission.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

Bonnie P. Salzman (Signature of certifying official)

Name and title of certifying official: Bonnie S. Salzman, Associate General Counsel

Name of agency: State Corporation Commission

Date: 1/8/08